

**ENTERED**

July 19, 2022

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

SAFECO INSURANCE	§	CIVIL ACTION NO.
COMPANY OF	§	4:21-cv-03297
AMERICA,	§	
Plaintiff,	§	
	§	
	§	
vs.	§	JUDGE CHARLES ESKRIDGE
	§	
	§	
PROGRESSIVE	§	
COUNTY MUTUAL	§	
INSURANCE	§	
COMPANY,	§	
Defendant.	§	

**ORDER GRANTING SUMMARY JUDGMENT**

Pending is a motion by Plaintiff Safeco Insurance Company of America for summary judgment. Dkt 18. Defendant Progressive County Mutual Insurance Company didn't respond.

"It is well established in the Fifth Circuit that a federal court may not grant a 'default' summary judgment when no response has been filed." *Morgan v Federal Express Corp*, 114 F Supp 3d 434, 437 (SD Tex 2015) (quotations omitted), citing *Eversley v MBank of Dallas*, 843 F2d 172, 174 (5th Cir 1988). But if no response to a motion for summary judgment has been filed, the court may find as undisputed the statement of facts in the motion for summary judgment. *Ibid* (citations omitted).

Safeco brings a claim for declaratory judgment. Dkt 1 at 6–7. Progressive doesn't dispute the underlying facts made the basis of this action. Safeco further submits undisputed evidence and controlling law that it's entitled to judgment against Progressive because, among other

reasons, (i) the Progressive policy provides primary coverage to the plaintiff in the underlying action with the Safeco policy being only for excess coverage, (ii) the “other insurance” provisions of the Safeco policy are enforceable, rendering the Progressive policy primary and the Safeco policy excess, and (iii) Safeco has no obligation for the underlying uninsured/underinsured motorist claim unless and until the Progressive policy limits are exhausted.

The motion for summary judgment by Plaintiff Safeco Insurance Company of America is GRANTED. Dkt 18.

It is hereby DECLARED that (i) Safeco has no obligation to afford coverage on a primary basis to Jeremy Barnard for the uninsured/underinsured motorist claims arising from the underlying action because the Safeco policy is excess to the Progressive policy, and (ii) Progressive has an obligation to afford coverage on a primary basis to Jeremy Barnard for the uninsured/underinsured motorist claims arising from the underlying action.

Safeco Insurance Company of America must submit a proposed form of judgment by July 29th. It should there specify whether it shall serve as a final judgment in this matter.

SO ORDERED.

Signed on July 19, 2022, at Houston, Texas.

A handwritten signature in black ink, appearing to read "Ch R Eskridge". The signature is stylized with a large "Ch" and a prominent "R".

Hon. Charles Eskridge  
United States District Judge